

PLM-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

10,058

FILE: B-193360

DATE: MAY 07 1979

Desp. James

MATTER OF: James W. Barrett - Interagency detail -
[Request For Retroactive temporary promotion And Backpay]

DIGEST: Employee was detailed from Small Business Administration *AGC00002* to Federal Energy Administration. He claims backpay for period when he performed *AGC00075* duties allegedly assigned to higher level position. Claim may not be paid since employee cannot be promoted to position which has not been classified. Applicable regulations and instructions providing backpay for improper details relate only to transfers within the same agency.

This action is the result of an appeal from a settlement of our Claims Division dated June 29, 1978, denying the claim of Mr. James W. Barrett for a retroactive temporary promotion and backpay. Mr. Barrett's claim arose in connection with his detail from the Small Business Administration to the Federal Energy Administration from January 17, 1974, through October 29, 1974. Apparently he is claiming on the basis that while in a grade GS-12 position he was detailed to a GS-13 position for a period in excess of 120 days. Mr. Barrett's claim is denied for the following reasons.

The record shows that Mr. Barrett was detailed to the position of Federal Allocation Officer with the Federal Energy Administration. Although the personnel documents in the file show that he was detailed as a Federal Allocation Officer, administrative reports from both the Federal Energy Administration and the Small Business Administration state that he was detailed to an undescribed and unclassified position designated as "Special Assistant to the Director, Operations Division." The position to which Mr. Barrett was detailed was unclassified throughout the period of the detail. It was subsequently classified as a Fuel Allocation Officer, GS-5-301-13, on August 31, 1976, and later downgraded to a Supervisory Applications Examiner, GS-963-10.

In Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977), we held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is

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terminated. Subsequently, in Matter of Marie Grant, 55 Comp. Gen. 785 (1976), we ruled that the Turner-Caldwell decision applied retroactively to extended details to higher grade positions subject only to the time limitation of 6 years on filing claims imposed by 31 U.S.C. § 71a. These decisions have only been applied to details within the same agency since the decisions construed Civil Service Commission regulations applying only to details within the same agency. A detail for purposes of recovering backpay for improper details is defined in pertinent part as the temporary assignment of an employee to a different position within the same agency. Para. 4 CSC Bulletin 300-40, May 25, 1977. Without deciding finally whether Turner-Caldwell principles could apply to interagency detail situations the claim here otherwise fails to meet the requirements necessary for recovery.

In our decision, Matter of Willie W. Cunningham, 55 Comp. Gen. 1062 (1976), it was held that an employee cannot be promoted to a position that has not been classified. We stated, in pertinent part, that the classification of a position is within the discretion of the agency concerned, subject to requests for review and appeals by employees of the agency. It was then concluded, commencing at page 1065, as follows:

"As noted in 55 Comp. Gen. 515 (1975), the Civil Service Commission's regulations for position classification provide that the effective date of a classification action taken by an agency or a classification action resulting from an employee's appeal is the date the action is approved or the appeal is decided or a date subsequent to that date. See C.F.R. 511.701 et seq., and 532.701 et seq. (1975). Absent any indication that the grievant's position was illegally or intentionally misclassified, there is no authority to allow a retroactive promotion with backpay on the ground that there was an erroneous classification decision. 52 Comp. Gen. 631 (1973); 50 id. 581 (1971); and B-173831, September 3, 1971. Therefore, until the position was classified upward and she was promoted, the grievant was not entitled to the pay of the higher graded position. Dianish et al. v. United States, 183 Ct. Cl. 702 (1968). In this connection we point out that the above rule concerning classification actions has recently been confirmed by the Supreme

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Court of the United States in United States v. Testan et al., 44 U.S.L.W. 4245, decided March 2, 1976."

Other aspects of Mr. Barrett's claim provide no basis for recovery since the position to which he was detailed was not classified during the period of the detail. Accordingly, the denial of his claim is sustained.


Deputy] Comptroller General
of the United States